

Kenneth J. Roach,

Plaintiff,

vs.

Mr. Day,

Defendant.

Civil Action No.: 8:09-2155-CMC-BHH

**REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

In support of his motion for a default judgment, the Plaintiff contends that the Defendant Day has not been truthful to his attorney. Rule 55(a) of the Federal Rules of Civil Procedure provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.” Fed.R.Civ.P. 55(a). The Plaintiff has failed to set forth any ground sufficient for the entry of default. Furthermore, the Defendant is not in default as he timely filed his *pro se* answer to the complaint on May 4, 2010, as well as an Amended Answer through retained counsel.¹

¹The certificate of service on the Amended Answer shows a service date of August 19, 2010. However, do to an oversight by defendant's attorney, the Amended Answer was not filed with this Court until August 26, 2010, (Dkt. #61) following the filing of Plaintiff's Reply to the Amended Answer (Dkt. #58).

Based on the foregoing, it is recommended that the Plaintiff's Motion for Default (Dkt. # 59) be DENIED.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks
United States Magistrate Judge

August 30, 2010
Greenville, South Carolina

The Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 10768
Greenville, South Carolina 29603

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).